

REMARKS

Claims 1-14, as amended, and new claims 34-46 appear in this application for the Examiner's review and consideration. Claims 15-28 and non-elected claims 29-33 have been cancelled without prejudice to applicants' rights to present these claims in other applications. Claim 2 has been amended for clarity. New claims 34-46 are directed to preferred embodiments that are supported by the original claims and the specification. As no new matter is introduced by any of these changes, the entry of these changes and additions is warranted at this time.

Claims 1, 15-19, 24 and 27-28 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of certain claims of copending Application No. 10/984,914. In response, Applicants have cancelled the method claims from this application and have cancelled the product claims for the copending application. Thus, there is no overlap in the claims so that the rejection should be withdrawn.

Claims 2-13, 20-23 and 25-26 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over certain claims of copending Application No. 10/984,914. In response, Applicants note that a terminal disclaimer will be submitted once any conflicting claims are patented or are indicated as being allowable.

Claims 2-4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In response, claim 2 has been amended to clarify that the filling is retained within the shell instead of being part of a shell. Thus, the rejection is overcome and should be withdrawn.

Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over International patent application publication WO 02/15706 to Pritchard et al. (referred to hereafter as "Pritchard") in view of US patent No. 6,391,373 to Kaiser et al. (referred to hereafter as "Kaiser").

Pritchard describes a solid fat based chocolate cones formed with male and female dies. There is no disclosure in Pritchard regarding the plastic viscosity and yield value of the composition as disclosed in claims 1-14 of the present application. In particular, the present invention provides a product with a coating of the entire inner surface of a packaging sleeve to form an edible shell-formed composition having a consistent thickness. This is possible

because the composition has a plastic viscosity of about 10 to 40 Poise and a yield value of about 50 to 250 dynes/cm² during the showering or pouring operations that are used to form the shell. These properties enables the shell to have a consistent and uniform thickness. Moreover, the top edge of the cone in Pritchard is straight while the shower cones of the present invention have crenulated rim as recited in claim 11. Thus, Pritchard does not teach or suggest the products defined by the present claims.

Kaiser does not remedy the deficiencies of Pritchard. Kaiser relates to confectioneries, and particularly reduced fat chocolates comprising an admixture of non-fat chocolate ingredients in accordance with specified particle size distribution formulae, and a method of preparation thereof. Kaiser does not mention forming a receptacle such as cone by showering, pouring or any other techniques. Although Kaiser discloses chocolate compositions with a plastic viscosity and yield value within the ranges given in the claims of the present invention, there is no teaching or disclosure to use such compositions for receptacles for confection or ice confections. Certainly, Kaiser does not disclose or teach that the use of his confectioneries would result in uniform wall thicknesses if showered or poured upon a support. Thus, there is no motivation to combine the teachings of Kaiser with Pritchard and the rejection over these two references should be withdrawn.

The cancellation of claims 15-33 renders moot all rejections of those claims.

In view of the above, it is respectfully submitted that the entire application is in condition for allowance, early notice of which would be appreciated. Should the Examiner not agree, then a personal or telephonic interview is respectfully requested to discuss any remaining issues and expedite the eventual allowance of this application.

Respectfully submitted,

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